IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 501-DB of 1997

Date of Decision :- January 12, 2007

Shamsher and another ....APPELLANTS

VERSUS

State of Haryana ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present:- Mr. R.S.Cheema, Senior Advocate with
Ms Tanu Bedi, Advocate
for the appellants.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is an appeal against the judgment of Additional Sessions Judge, Jind whereby he convicted Shamsher son of Jagat Singh and Ram Niwas son of Chandu Ram under Sections 302/34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.2,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for one year. Further they were convicted under Section 25 of the Arms Act

and sentenced to undergo rigorous imprisonment for two years. Both the sentences were to run concurrently.

The case of the prosecution is unfolded by the statement Ex.PB of Krishan given to SI Kanwarjit Singh on 17.11.1995 at 7.45 p.m. near the place of occurrence. Krishan stated that he is a resident of Village Kinnar. About 10 years back, Mohinder son of Chandu was murdered and eight persons including him were challaned. Pala Singh son of Tek Ram, resident of Village Kinnar was convicted and sentenced and the remaining seven including Krishan were acquitted. After this incident, Krishan and his family were not on speaking terms with the family of Chandu. Two months earlier to the present occurrence, Shamsher, Ram Phal etc. had assaulted and injured Sube Singh, the father of Krishan, with jailies and Barchhas (spears) and in order to save his father, Krishan fired a gun shot from his licenced weapon, which hit Shamsher Singh on his ear and Ramphal on his foot. Krishan's father Sube Singh and his brother Om Parkash and Krishan were challaned under Section 307 of the IPC at Police Station Narnaund. All three are now on bail. On 17.11.1995 Krishan along with his brother Shamsher and his Chacha (father's younger brother) in relation Inder, had come to Jind to purchase household articles and to get repaired the head of the engine. At about 6.30 p.m. after getting the head repaired, they were going towards Bankhandi Jind from Bhiwani Road, Jind. Krishan's brother Shamsher was ahead of them, carrying the head of the engine on his left shoulder. When they reached near Bankhandi Jind octroi post, Shamsher son of Jita armed with sickle and Ram Niwas son of Chandu armed with a knife came from behind the octroi

post. Ram Niwas raised a lalkara to finish the enemy. Shamsher (accused) gave a sickle blow on the right shoulder of Krishan's brother Shamsher, whose left thumb got chopped off. The second blow was given by Shamsher (accused) to Shamsher (deceased) with the sickle, which hit on the backside of the neck of the deceased. The third blow was given to Krishan's brother on his head, which hit him on his left temporal region. As a result of which, Krishan's brother Shamsher (deceased) fell down on the ground and while he was lying on the ground, Ram Niwas gave knife blows to him on his back, right side of buttocks and three injuries on his chest. Shamsher (accused) gave another knife blow, which hit on the forehead of Shamsher (deceased). Krishan and his uncle rushed to the spot. On hearing the noise, two constables also reached the spot. Shamsher (accused) and Ram Niwas were caught red-handed at the spot along with their weapons. Shamsher (deceased) succumbed to his injuries at the spot. On the basis of this statement, FIR Ex.PB/1 was recorded on 17.11.1995 at 8.00 p.m. The special report reached the Ilaqa Magistrate, Jind on the same day at 11.10 p.m.

The prosecution to prove its case brought into the witness box Kuldeep Gupta Draftsman as PW1, Krishan Lal Inspector as PW2, Suresh Kumar Photographer as PW3, Chander Bhan ASI as PW4, Ram Niwas ASI as PW5, Constable Sumer Singh as PW6, Ram Kumar as PW7, Constable Subh Karan as PW8, Krishan as PW9, Inder Singh as PW10, Dr. S.K.Aggarwal as PW11, Constable Mohinder Singh as PW12 and SI Kanwarjit Singh as PW13.

Learned counsel for the appellants has argued, that after going through the evidence and the statements especially of Constable Mohinder Singh PW12, who was allegedly on traffic duty on that day, it seems that the mob had arrested the appellants and handed over the appellant to him. No blood stains were found on the clothes of Constable Mohinder Singh PW12, though he has stated, that he had showed indulgence with the body of the deceased. Krishan PW9 in his testimony before the Court has admitted, that Inder Singh PW10 had met them at the Bus Stand, but had not accompanied them from the village. This is in contradiction to the statement of Inder Singh PW10, who has stated that all of them came together from the village. The mechanic, who had repaired the head of the engine, has not been examined, as he was a crucial witness to prove the reasons for the complainant party to have come to the town. Neither the mechanic has been examined, nor his name has been spelt out in the list of witnesses of the prosecution. It is the case of the prosecution that the deceased was carrying the engine head on his left shoulder when he was attacked by the appellants, but Krishan PW9 in his testimony before the Court has stated, that they did not collect the engine head from the spot nor was it taken into possession by the police. It was after 5-6 days of the incident that they collected the engine head from the police station. Inder Singh PW1 has stated, that the engine head was lying at the spot near the octroi post from where it was collected after five days. This glaring discrepancy as to from where the engine head was collected, shows that both Krishan PW9 and Inder Singh PW10 were not present at the time when the occurrence had taken place. The Investigating Officer SI

Kanwarjit Singh PW13 has stated, that he did not notice the engine head at the place of occurrence, nor he did any verification of it.

Learned counsel has further argued, that testing the case on the probabilities, the nature of the injuries on the person of the deceased was that the injuries could not have been inflicted with small weapons like sickle Ex.P11 allegedly in the possession of Shamsher and knife Ex.P16 allegedly in the possession of Ram Niwas. If we see photographs Exs. P1 to P5, the knife strangely is lying next to the dead body of the deceased.

The motive for the commission of the offence is also not plausible, as FIR No.192 of 1985, in which eight persons from the appellants' side were acquitted, was registered a long time back. The other case was registered under Section 307 IPC, two months prior to the present occurrence, in which the complainant party were the accused. This fact cannot be overlooked that Constable Mohinder Singh PW12, who allegedly caught hold of the appellants along with the other constable, is a close relative of the deceased. Constable Mohinder Singh PW12 was the first cousin brother of Jharo, the mother of the deceased, which has come in evidence. The testimony of Constable Mohinder Singh PW12 also falters on this count.

Learned counsel for the State has argued, that there is no delay in lodging of the FIR. Two police officials were on traffic duty on the day of occurrence. Constable Mohinder Singh PW12 caught hold of the appellants at the spot and also recovered the weapon of offence. Deceased along with his brother Krishan PW9 and uncle Inder Singh PW10 had come to the town to buy household articles and also to have the

engine head repaired. Non examination of the mechanic by the Investigating Officer does not affect the case materially. The testimony of the witnesses is corroborated by the medical evidence and they also corroborate each other inter se. The motive for the commission of the offence was very strong, as both the complainant and the appellant parties were in criminal litigation since 1985.

We have heard the learned counsel for the parties and perused the record with their assistance.

Occurrence in this case had taken place on 17.11.1995 at 6.30 p.m. in the Fountain Chowk, Jind. Statement Ex.PB of Krishan PW9 was recorded on the same day at 7.45 p.m. by SI Kanwarjit Singh PW13. On the basis of this statement, formal FIR Ex.PB/1 was recorded on the same day at 8.00 p.m. at Police Station City Jind and the special report was in the safe hands of the Judicial Magistrate, Jind on 17.11.1995 at 11.10 p.m. The prompt recording of the FIR and the special report reaching the Judicial Magistrate, Jind by 11.10 p.m. goes a long way in proving the case of the prosecution. The names of the appellants are mentioned. The weapons of offence and number of injuries caused are also mentioned. The name of Krishan PW9 and Inder Singh PW10 and Constable Mohinder Singh PW12, the eye witnesses to the occurrence, are also mentioned. The motive for the commission of the offence has also been spelt out in the FIR Ex.PB/1.

Constable Mohinder Singh PW12, who was on traffic duty on that day along with another constable, saw the occurrence and the appellants were apprehended by them. Both Krishan PW9 and Inder Singh

PW10 have categorically stated, that they came along with the deceased from their Village Kinnar. Krishan PW9 has stated, that he along with his brother (deceased) and his uncle Inder Singh PW10 left the village at 12.00 noon in a three-wheeler for Jind. All of them had assembled at the local bus-stand. Inder Singh PW10 had come to the bus stand per chance, while Krishan PW9 along with his brother Shamsher (deceased) had reached earlier. They travelled in a four wheeler. All of them first went to the mechanic to have the engine head repaired. Deceased Shamsher was left with the mechanic and then both Krishan PW9 and Inder Singh PW10 went to the Bazar to purchase some domestic articles. When they were going back and reached near Octroi Post of Bankhandi, appellants came armed with sickle Ex.P11 and knife Ex.P16 and started inflicting injuries on the person of the deceased. The nature of injuries have been spelt out by both these witnesses Krishan PW9 and Inder Singh PW10. Both the appellants were caught on the spot by Krishan PW9, Inder Singh PW10 and two constables who were on traffic duty. Their weapons were recovered. After recording of statement of the complainant by SI Kanwarjit Singh PW13, who arrived at the spot, he took the clothes of the appellants into his possession, which were blood stained. Much emphasis has been laid by learned counsel for the appellants that the mechanic, who repaired the engine head, was not examined. In fact there was no need to examine the mechanic. The motive for the commission of the offence was very strong and the three eye witnesses i.e. Krishan PW9, Inder Singh PW10 and Constable Mohinder Singh PW12 had witnessed the occurrence. The engine head was recovered after 5-6 days. Though one

witness says that it was recovered from the police station, but the other says that it was recovered from the octroi post, this contradiction does not materially affect the prosecution case.

The motive for the commission of the offence was very strong. It was about two months earlier to the present occurrence that a FIR was registered against the complainant Krishan PW9 and his brother Om Parkash under Section 307 IPC by the appellant party. Enmity between both the parties was strong and both were so inimical towards each other that Inder Singh PW10, the uncle of the deceased has stated in his cross-examination, that it is correct that he never liked presence of the appellants in the village because of inimical relations with them.

The argument of the learned counsel for the appellants that it was a mob which had caught hold of the appellants and then handed them over to the police, does not cut much ice. No one from the public was brought forward by the appellants before the Investigating Officer during the course of investigation or during the trial as a defence witness. The prosecution witnesses i.e. Krishan PW9, Inder Singh PW10 and Constable Mohinder Singh PW12 have withstood the test of cross examination on all counts and have not faltered or altered the truthful version, which they spelt out in their examination-in-chief.

We do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(**ARVIND KUMAR**)
JUDGE

January 12, 2007
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO